

**ENTERED**

March 24, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

GREGG BARTHELMAN,

§

Petitioner,

§

VS.

§

BOBBY LUPKIN, Director, Texas  
Department of Criminal Justice,  
Correctional Institutions Division,

§ CIVIL ACTION NO. 7:21-cv-000146

Respondent.

§

**ORDER**

Pending before the Court is Petitioner Gregg Barthelman's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On January 25, 2022, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's motion for summary judgment be granted, that Petitioner's § 2254 habeas petition be denied, that Petitioner be denied a certificate of appealability, and that this action be dismissed.<sup>1</sup> Petitioner has filed timely objections to the Magistrate Court's Report and Recommendation.<sup>2</sup>

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.

Having thus reviewed the record in this case, the parties' filing and the applicable law, the

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<sup>1</sup> Dkt. No. 10.

<sup>2</sup> Dkt. No. 13.

Court adopts the Report and Recommendation as set out herein.<sup>3</sup> Accordingly, it is hereby  
**ORDERED** that Respondent's Motion for Summary Judgment is **GRANTED**,<sup>4</sup> that Petitioner's  
Petition for Writ of Habeas Corpus Pursuant to § 2254 is **DENIED**,<sup>5</sup> that Petitioner is denied a  
certificate of appealability, and that this action is **DISMISSED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 24th day of March 2022.



Micaela Alvarez  
United States District Judge

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<sup>3</sup> The Court does note a typographical error on page 2, on the third-fourth line wherein it states, “(4) the Appellate Court erred in finding the failure to give a reasonable jury charge was *not* harmless error.” Petitioner actually claims the Appellate Court erred in finding the failure *was* harmless error and this is correctly noted in the body of the report.

<sup>4</sup> Dkt. No. 7.

<sup>5</sup> Dkt. No. 1.